IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7121 OF 2004

Chandrakant Kundanmal
Sancheti & Ors .. Petitioners.
Vs.
Anandibai Maruti Ramoshi
alias Chavan & Ors. .. Respondents.

Mr.G.S.Godbole for the petitioners.
Mr.N.P.Deshpande for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 9TH DECEMBER, 2004

P.C.:

1. Heard Mr.Godbole, learned counsel for the petitioners and Mr.Deshpande, learned counsel for the respondents.

2. This writ petition is directed against the order dated 27.7.2004, by which the trial court has allowed the application seeking amendment of the plaint filed by the respondents-plaintiffs. The plaintiffs sought to amend the title of the plaint contending that plaintiff no.2 had signed the plaint for himself and on behalf of plaintiff nos.1, 3 and 4. The amendment application was opposed mainly on the ground that the relief sought

is barred by limitation and, therefore, it will take away the right accrued to the defendants. I heard Mr.Godbole, learned counsel for the petitioners for quite sometime. To my specific query as to whether or not the plaintiffs can file a fresh suit seeking reliefs claimed in the plaint in question, his answer was in the affirmative. However, he submitted that if such suit is filed, the petitioners will have a right to raise an issue of limitation. He further submitted that it is open for the respondents-plaintiffs to withdraw this suit and file an independent suit. The law is well settled that in such a situation the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed. This position of law is settled by the Apex Court in **Ragu Thilak D.John Vs. S.Rayappan and Others 2001(2) SCC 472**. Keeping that in view and considering the reasons recorded by the court below while allowing the amendment and other material placed before me, I decline to exercise

jurisdiction under Article 227 of the Constitution of India. Interest of justice would be served by keeping a plea of limitation open for the petitioners to raise at an appropriate stage and direct the trial Court to decide the issue on merits in accordance with law. Order accordingly. The writ petition, therefore, fails and is dismissed as such.

(D.B.Bhosale, J.)

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